

# EXHIBIT 1

**MYRON J. HELFGOTT, PH.D.  
7 DELAWARE AVENUE  
DELHI, NY 13753  
607-746-3479**

---

**THE RESULTS OF A  
LIKELIHOOD OF CONFUSION SURVEY  
CONCERNING  
DISNEY T-SHIRTS**

**SUMMARY STATEMENT**

**JULY, 2009**

### **SUMMARY STATEMENT**

I, Myron J. Helfgott, am currently employed as a consultant to attorneys in the area of survey research. I design and conduct surveys relevant to trademark litigation, including surveys of likelihood of confusion.

I was contacted by counsel representing The Walt Disney Company, Disney Consumer Products, Inc. and Disney Destinations, LLC, the Defendants in this litigation with Plaintiff THOIP (A Chorion Limited Company), which licenses Little Miss Children's Books and Little Miss T-shirts. I was asked to design and conduct a likelihood of confusion survey involving four Disney T-shirts and four control T-shirts.

The question at issue was: whether or not consumers interpret these Disney T-shirts as being put out by, in association with, or produced with the permission of THOIP, Chorion, or Little Miss Children's Books.

The survey was conducted among 1,200 consumers in 15 metropolitan areas, with 150 respondents for each of the 8 T-shirt groups.

In each interview, the respondent was shown a single T-shirt and asked the three standard likelihood of confusion questions concerning source, association, and permission, along with questions concerning the reasons for their responses.

#### **The results show that there is virtually no evidence of confusion.**

Only one respondent out of the 1,200 interviewed identified the Disney T-shirt as being associated with "Little Miss", the company the puts out "books and T-shirts" -- an incidence of .0008, less than 1 chance in a thousand.

**The results also show that the great majority of respondents correctly identified the products shown as Disney T-shirts.** More specifically, 80% of the total sample made this identification, with individual exhibit scores ranging from 71% to 85%. The majority of these responses were given in answer to the first likelihood of confusion question, that of source.

**PERCENT OF DISNEY IDENTIFICATION  
FOR EACH T-SHIRT TESTED**

<b><u>TEST CELLS T-SHIRTS</u></b>	<b><u>CONTROL CELLS T-SHIRTS</u></b>
<u>Little Miss Bossy</u> 71%	<u>Pushy</u> 76%
<u>Miss Chatterbox</u> 85%	<u>Motormouth</u> 87%
<u>Miss Fabulous</u> 75%	<u>Marvelous</u> 82%
<u>Little Miss Perfect</u> 85%	<u>Flawless</u> 82%
<b><u>Average of 4 Test T-shirts</u></b> 79%	<b><u>Average of 4 Control T-shirts</u></b> 82%

The reasons given for these responses show that the high level of Disney identification is due to the widespread recognition that the cartoon characters on the T-shirts are Disney characters.

A comparison of the test cell and control cell results further supports the conclusion that **it is the cartoon illustrations on the T-shirts, rather than the words, that produce the Disney identification.**

The average Disney identification score for the test product is 79%. For the controls, the average is not significantly different at 81%.

Besides Disney, no other response group featured importantly in the survey results. Other response groups included other cartoon companies (1%), underwear manufacturers (7%), large retail chains (11%), smaller retailers (8%), and a group of 12% of the sample that answered “don’t know” to all three key confusion questions.

**DETAILED REPORT****TABLE OF CONTENTS**

I.	Introduction.....	1
II.	Professional and Educational Background.....	2
III.	Background of the Present Assignment.....	4
IV.	The Objective of the Survey.....	5
V.	The Design of the Survey.....	6
VI.	The Exhibits.....	7
VII.	The Design of the Interview.....	8
VIII.	The Main Interview.....	9
IX.	Criteria for Counting an Interview's Responses as Indicating the Likelihood of Confusion .....	10
X.	Results of the Survey.....	11
XI.	Conclusion.....	15
XII.	Criteria.....	16
	<u>Appendix A</u>	
	- Questionnaire.....	A2
	<u>Appendix B</u>	
	- Detailed Tabulations.....	B2
	<u>Appendix C</u>	
	- Curriculum Vitae.....	C2
	- Prior Testimony.....	C3
	- Compensation.....	C4
	<u>Appendix D</u>	
	- List of Documents Considered.....	D2

**I. INTRODUCTION**

I, Myron J. Helfgott, am currently employed as a consultant to attorneys in the area of survey research.

I design and conduct surveys relevant to trademark litigation, concerning such matters as likelihood of confusion, secondary meaning, dilution, trademark identification, false advertising and false endorsement.

A description of my qualifications follows.

## **II. PROFESSIONAL AND EDUCATIONAL BACKGROUND**

I received a B.A. degree in Psychology from Brooklyn College in 1948, a M.A. degree in Social Psychology from New York University in 1949, and a Ph.D. degree in Social Psychology from the University of Michigan in 1952.

I was also a member of the staff of the Survey Research Center of the University of Michigan in 1952, where I was an Assistant Research Study Director. Between 1952 and 1954, I was a Research Study Director at Columbia University's Bureau of Applied Social Research, and a Lecturer in Social Psychology at Columbia University.

From 1954 to 1957, I was employed by two large New York City advertising agencies. From 1954 to 1955, I was a Senior Research Study Director in the Research department of Young & Rubicam, Inc. From 1955 to 1957, I was Director of the Research Department of Ogilvy & Mather, Inc.

From 1957 to 1962, I was Vice President of Marketing and Research of Lippincott & Margulies, Inc., which was at the time America's largest Industrial Design firm, specializing in the designs of trademarks, packages, and corporate identification. I was also President of three affiliated corporations: The Package Research Institute, which did research on trademarks and package designs; Names, Inc., which developed and evaluated names for new products and companies; and Image Research, Inc., which did research to develop brand and company image marketing strategy. During this period I was also Chairman of the Package Research Conference.

From 1962 to 1982, I was founder and Chief Executive of Helfgott and Partners, Inc. (Later Helfgott, Towne & Silverstein, Inc.), a New York City advertising agency which offered services in Advertising, Marketing, Trademark and Package Design, and Marketing and Consumer Research.

From 1982 to the present, I have been employed as a consultant to attorneys who specialize in litigation involving trademarks, names and symbols, package and products design, and advertising claims.

My services include providing survey research information, usually concerning the measurement of secondary meaning, the likelihood of confusion, dilution, trademark identification, as well as expert witness testimony.

I have also been employed to evaluate surveys done by other practitioners as to the correctness of their methodology and the acceptability of their findings as legal evidence.

Over the past 55 years, I have personally conducted hundreds of survey research assignments and supervised thousands of others. The clients for whom I have performed these services include over 300 of the 500 largest U.S. corporations, as per Fortune Magazine's list.

Over the years, I have been a member of the following professional organizations: Market Research Council, Copy Research Council, American Marketing Association, American Psychological Association, Society for the Psychological Study of Social Issues, American Association for Public Opinion Research, and the Advertising Research Foundation.

I have spoken extensively in the field of survey research, and have previously testified before the International Trade Commission and in Federal courts as an expert on various aspects of survey research as they apply to trademark litigation.



### **III. BACKGROUND OF THE PRESENT ASSIGNMENT**

I was contacted by counsel representing The Walt Disney Company, Disney Consumer Products, Inc. and Disney Destinations, LLC.

In that conversation, I was told that their clients were the Defendants in a litigation involving a line of Disney T-shirts.

The Plaintiff was referred to as THOIP, A Chorion Limited Company who licenses a line of children's books and a line of T-shirts which use the name "Little Miss" along with a character trait word and a cartoon illustration. The Plaintiff alleges that the Disney T-shirts which use the terms "Little Miss" or "Miss" on their T-shirts along with a character trait word are likely to cause confusion.

I was asked to design and conduct a likelihood of confusion survey that would provide factual information relevant to this litigation.

As orientation material, I was supplied with copies of legal documents (Complaints and Counter Claims) and a copy of a report of a likelihood of confusion survey titled "Expert Report of Gary T. Ford, Ph.D." and later, an amended copy of that report.

This report describes the methodology and findings of the survey I designed and conducted.

#### **IV. THE OBJECTIVE OF THE SURVEY**

This survey was designed to determine whether or not T-shirts put out by Disney are likely to cause consumers to think they are put out by, in association with, or with the permission of the Plaintiff.

## **V. THE DESIGN OF THE SURVEY**

The survey I designed was based on personal interviews with 1,200 respondents conducted in shopping mall-based research facilities in 15 geographically-dispersed metropolitan areas.

They are:

Atlanta	Denver	Philadelphia
Boston	Houston	Phoenix
Chicago	Long Island, N.Y.	San Diego
Cleveland	Los Angeles	Tacoma
Dallas	Milwaukee	Willowbrook, N.J.

In each city, a quota of 80 interviews was assigned and completed, 10 for each of 8 T-shirt groups.

Within each group, interviews were equally divided between younger (18 to 34 year olds) and older (35 years and older) respondents. These were further divided into equal groups -- those purchasing for themselves and those purchasing for a female child.

A validation survey is in progress. A report will be submitted upon completion.

## **VI. THE EXHIBITS**

The research called for 8 T-shirts to be tested. Four were Disney T-shirts, each of which featured an illustration of a Disney cartoon character along with the words “Miss” or “Little Miss” followed by a word describing a character trait - “Bossy”, “Chatterbox”, “Fabulous”, and “Perfect”.

Four other T-shirts were also tested as controls. These featured the same cartoon characters of the Disney T-shirts described above, but in the case of these control T-shirts, the words “Miss” or “Little Miss” were omitted, and a character trait connotatively-similar to those mentioned above was used - “Pushy”, “Motormouth”, “Marvelous”, and “Flawless”.

150 respondents were exposed to each of the eight exhibits described above.

## **VII. THE DESIGN OF THE INTERVIEW**

Interviewers in each mall were instructed to select potential respondents from among the mall patrons.

A screening interview was first conducted to determine if the person qualified for inclusion in the survey.

Requirements for inclusion were that the person be:

- An adult female, 18 years of age or older,
- Who had, in the past 12 months, purchased a T-shirt with a cartoon character on it, for herself, or a female child, and/or
- Who are likely to purchase a T-shirt with a cartoon character on it for herself or a female child in the next 12 months.

Qualified persons were then invited to participate in the main survey.

## **VIII. THE MAIN INTERVIEW**

In this interview, each respondent was shown one T-shirt which had the picture of a cartoon character and some writing on it.

The interviewer asked the respondent to look it over “as you would in a store and were considering buying it.”

The interviewer then asked the following questions:

*“What company do you think puts out this T-shirt, or don’t you know?”*

*“Do you think the company that puts out this T-shirt puts it out themselves, or in association with some other company, or don’t you know?”*

*“Do you think the company that puts out this T-shirt got permission from some other company, did not get permission from some other company, or don’t you know?”*

If the respondent answered any of the above questions with a company name, a follow-up “reasons” question was asked,

*“What in particular about this T-shirt makes you think (that)?”*

For each interview in which at least one company name was mentioned in response to the previous questioning, a final question was added for each company name,

*“Please tell me all of the products you know of which this company puts out.”* Probe *“any others?”*

The complete questionnaire appears in Appendix A of this report. The reader is encouraged to consult it for exact wording, and interviewer instructions and procedures.

**IX. CRITERIA FOR COUNTING AN INTERVIEW'S RESPONSES  
AS INDICATING THE LIKELIHOOD OF CONFUSION**

An interview was counted as indicating a likelihood of confusion, if answers to any of the three confusion questions include any of the following names or words:

THOIP  
Chorion  
Miss, or Little Miss Books, or  
Books or Children's Books.

It was thought that if a respondent said only "Miss" or "Little Miss" it would be unclear if she was referring to a company, or simply reading the words on the T-shirt. To clarify this, a follow-up question concerning "*other products made by the company*" was added at the end of the interview. In the first wave this was planned as the key question in a follow-up telephone interview. In later waves, it was included in the mall interview itself.

The results follow. In reviewing them, note that if a company name was mentioned more than once in response to any of three key questions, it was only counted once in compiling the confusion score.

## **X. THE RESULTS OF THE SURVEY**

The results of the survey show that **the great majority of respondents correctly identify the exhibits shown as Disney products.** 80% of the total sample made this identification in response to one or more of the three key questions, the great majority of these were given in response to the first question, that of source.

### **DISNEY FIRST MENTIONS**

<b>QUESTIONS</b>	<b>TOTAL SAMPLE</b>	<b>TEST CELLS</b>	<b>CONTROL CELLS</b>
1 <sup>st</sup> - Source	67%	64%	70%
2 <sup>nd</sup> - Association	6%	7%	5%
3 <sup>rd</sup> - Permission	8%	8%	7%
<b>TOTAL MENTIONS</b>	<b>80%</b>	<b>79%</b>	<b>82%</b>

The results also show that **there is virtually no evidence of confusion.** Only one respondent out of 1,200 interviewed identified the Disney T-shirt as being associated with “Little Miss”, the company that puts out “books and T-shirts” -- an incidence of .0008, less than 1 chance in a thousand.

Manufacturers Fruit of the Loom and Hanes were mentioned by 7% of the sample. In this category, “Junk Food” was mentioned by 4 respondents, but none of their responses qualified as confusion responses, as discussed in the footnote on the following page.

Large retail chains were mentioned by 11% of the sample; smaller retailers by 8%.

Those remaining were respondents who answered “don’t know” to all three key confusion questions, 12%.



**TOTAL SAMPLE RESPONSES TO THE THREE  
LIKELIHOOD OF CONFUSION QUESTIONS**

Frequencies of 4 or less mentions are reported below as numbers in parentheses rather than percents.

	<b>TOTAL SAMPLE</b>	<b>TEST CELLS</b>	<b>CONTROL CELLS</b>
<b>SIZE OF SAMPLE</b>	1,200	600	600
<b>CARTOON COMPANIES</b>	%	%	%
<b>Disney</b>	<b>80%</b>	<b>79%</b>	<b>82%</b>
<b>Little Miss</b>	<b>(1)</b>	<b>(1)</b>	<b>---</b>
Others (Loony Tunes, Warner Bros., Cartoon Network)	1%	2%	(2)
<b>MANUFACTURERS</b>			
Fruit of the Loom, Hanes	7%	7%	7%
Junk Food*	(4)	(3)	(1)
<b>RETAILERS</b>			
Large Chain Stores	11%	11%	12%
Other Retail Stores	8%	8%	9%
<b>DON'T KNOW</b>	12%	14%	11%

---

\*Since THOIP T-shirts carry the "Junk Food" label, it was thought that "Junk Food" might be considered a confusion response, if it referred to the particular T-shirt exhibited, rather than to cartoon-illustrated T-shirts in general.

In this survey, 4 respondents cited "Junk Food" as the company that put out the exhibited T-shirts (3 test shirts, 1 control shirt). Their reasons indicated that they were referring to cartoon T-shirts as a group.

*"A style they would produce"*

*"Because Minnie looks different. Her clothes look like a knock-off"*

*“They put out T-shirts with characters”*

*“They do T-shirts with certain characters”*

Because of this, “Junk Food” was not counted as a confusion response.

The results support the conclusion that **the high level of Disney identification is due to the widespread recognition that the cartoon characters on the T-shirts are Disney characters.**

When asked their reasons for the Disney identification, virtually all respondents referred to the identity of the cartoon character on the shirt.

A comparison of the test and control cell results also support the conclusion that **it is the cartoon illustration on the T-shirt rather than the words, that produce the Disney identification.**

The average Disney identification score for the test product with the “Miss” or “Little Miss” words is 79%. For the controls without these words, the average is not significantly different, at 82%. The Disney identification scores for each T-shirt appear below.

### **DISNEY IDENTIFICATION SCORES**

<b><u>TEST CELLS</u></b> <b><u>T-SHIRTS</u></b>	<b><u>CONTROL CELLS</u></b> <b><u>T-SHIRTS</u></b>
<u>Little Miss Bossy</u> 71%	<u>Pushy</u> 76%
<u>Miss Chatterbox</u> 85%	<u>Motormouth</u> 87%
<u>Miss Fabulous</u> 75%	<u>Marvelous</u> 82%
<u>Little Miss Perfect</u> 85%	<u>Flawless</u> 82%
<b><u>Average of</u></b> <b><u>4 Test T-shirts</u></b> <b>79%</b>	<b><u>Average of</u></b> <b><u>4 Control T-shirts</u></b> <b>82%</b>

## **XI. CONCLUSION**

This survey provides no evidence of confusion.

On the contrary, it provides convincing evidence that consumers correctly identify these T-shirts with Disney, and that this is due, not to the presence or absence of the “Miss” or “Little Miss” words on the shirts, but to the widespread recognition that the cartoon characters on the T-shirts are Disney characters.

## **XII. CRITERIA FOR EVALUATING THE SURVEY**

In designing this survey I was mindful of the standards for judging the acceptability of survey findings listed in the Manual for Complex Litigation Third (1995).

These standards require that:

- (1) the universe is properly defined;*
- (2) a representative sample of that universe is selected;*
- (3) the questions to be asked of the interviewees are framed in a clear, precise and non-leading manner;*
- (4) sound interview procedures are followed by competent interviewers who have no knowledge of the litigation or the purpose for which the survey is conducted;*
- (5) the data gathered is accurately reported;*
- (6) the data is analyzed in accordance with accepted statistical principles; and,*
- (7) the objectivity of the entire process is assured.*

I believe that the survey that is reported upon in this document meets all of the requirements for acceptability as legal evidence described above.

  
Myron J. Helfgott, Ph.D.

**APPENDIX A**  
**QUESTIONNAIRE**

## **CLOTHING STUDY** **SCREENER**

NAME \_\_\_\_\_

RESPONDENT ID# \_\_\_\_\_

<b>CITY:</b> San Diego..... 01 Atlanta..... 02 Boston ..... 03 Chicago ..... 04 Cleveland ..... 05 Dallas..... 06 Denver ..... 07 Hicksville (NY).....08  ..	<b>CITY:</b> Houston ..... 09 Milwaukee .....10 Philadelphia .....11 Phoenix..... 12 Los Angeles ..... 13 Tacoma ..... 14 Wayne (NJ)..... 15	<b>AGE:</b> 18 - 34.....1 35 OR OVER.....2  <b>PURCHASE QUOTA:</b> for self.....1 for female child .. .2  <b>QUESTIONNAIRE COLOR</b> White .....1 Pink .....2 Green.....3 Tan .....4 Yellow.....5 Blue .....6 Orange.....7 Lilac ..... 8
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Hello, I'm \_\_\_\_\_ from Suburban Marketing Research a nationwide market research company. We're conducting a survey in this mall among people like yourself and I'd like to ask you a few brief questions. Let me assure you we are doing this for research purposes only and are not selling anything. We are only interested in your opinions, which will be held in the strictest confidence.

**NOTE: DO NOT CONTINUE INTERVIEW IF RESPONDENT HAS A HEARING, LANGUAGE, OR OBVIOUS VISUAL PROBLEM**

S1. Do you or does anyone living in your household work...  
**(READ LIST AND RECORD BELOW.)**

	<b>Yes</b>	<b><u>No</u></b>
In advertising or public relations.....1.....	2	
In marketing research.....1.....	.2	
As a lawyer or for a law firm.....1.....	2	
For a company that makes or sells girls or women's clothing.....	1.....	.2

**IF "YES" TO ANY, TERMINATE**

S2. Please tell me which of the following groups includes your age?

(READ LIST)

Under 18 ..... 1 ->TERMINATE  
 18 – 34 ..... 2 CHECK AGE QUOTAS  
 35 or older ..... 3 CHECK AGE QUOTAS  
**IF NEEDED FOR AGE QUOTA CONTINUE.**  
**IF OVER AGE QUOTA TERMINATE**

(DO NOT READ)

Refused..... 4 ->TERMINATE

S3. In the past 3 months, have you participated in a market research survey or study in a mall?

Yes 1 -> TERMINATE

No 2 -> CONTINUE

S4. During the last **12** months, did you purchase any of the following types of T-shirts for yourself or for a female child, or don't you know?

**READ ENTIRE LIST. START AT 'X' PRODUCT AND ROTATE UNTIL EACH IS ASKED.**  
**RECORD YES, NO, OR DON'T KNOW FOR EACH**

<u>START HERE</u>		<u>YES</u>	<u>NO</u>	<u>DON'T KNOW</u>
[ ]	A T-shirt with a school name or logo	1	2	3
[ ]	A T-shirt with a political or social message on it	1	2	3
[ ]	A T-shirt with an image of a cartoon character	1	2	3
[ ]	A T-shirt with the logo of a sports team	1	2	3
[ ]	A T-shirt with a witty or funny saying on it	1	2	3
[ ]	A plain colored T-shirt with nothing printed on it	1	2	3

**IF 'YES' TO ANY SHIRTS CONTINUE TO QUESTIONS S5 FOR THOSE STYLES**

S5. **FOR EACH YES ABOVE ASK:** Did you purchase this (\_\_\_INSERT SHIRT STYLE\_\_\_) for yourself, a female child, or both or don't you know?

	<u>SELF</u>	<u>CHILD</u>	<u>BOTH</u>	<u>DON'T KNOW</u>
A T-shirt with a school name or logo	1	2	3	4
A T-shirt with a political or social message on it	1	2	3	4
A T-shirt with an image of a cartoon character	1	2	3	4
A T-shirt with the logo of a sports team	1	2	3	4
A T-shirt with a witty or funny saying on it	1	2	3	4
A plain colored T-shirt with nothing printed on it	1	2	3	4

**IF YES TO CARTOON SHIRT ASSIGN TO SELF OR CHILD QUOTA AS APPROPRIATE**



**ASK ALL WOMEN S6**  
**ASK FOR EVERY TYPE OF T-SHIRT**

S6 During the **NEXT 12** months, are you likely to purchase any of the following types of T-shirts for yourself or for a female child, or don't you know?

**READ ENTIRE LIST. START AT 'X' PRODUCT AND ROTATE UNTIL EACH IS ASKED.**  
**RECORD YES, NO, OR DON'T KNOW FOR EACH**

<u>START HERE</u>	<u>YES</u>	<u>NO</u>	<u>DON'T KNOW</u>
[ ] A T-shirt with a school name or logo	1	2	3
[ ] A T-shirt with a political or social message on it	1	2	3
[ ] A T-shirt with an image of a cartoon character	1	2	3
[ ] A T-shirt with the logo of a sports team	1	2	3
[ ] A T-shirt with a witty or funny saying on it	1	2	3
[ ] A plain colored T-shirt with nothing printed on it	1	2	3

**FOR EACH YES ('LIKELY' TO PURCHASE) SHIRT, CONTINUE TO QUESTIONS S7**

S7. **IF LIKELY TO PURCHASE ANY T-SHIRT IN S6, ASK FOR EACH:** Do you think you would purchase (INSERT SHIRT STYLE ) shirt for yourself, a female child, or both or don't you know?

	<u>SELF</u>	<u>CHILD</u>	<u>BOTH</u>	<u>DON'T KNOW</u>
A T-shirt with a school name or logo	1	2	3	4
A T-shirt with a political or social message on it	1	2	3	4
A T-shirt with an image of a cartoon character	1	2	3	4
A T-shirt with the logo of a sports team	1	2	3	4
A T-shirt with a witty or funny saying on it	1	2	3	4
A plain colored T-shirt with nothing printed on it	1	2	3	4

**IF YES TO CARTOON SHIRT ASSIGN TO SELF OR CHILD QUOTA AS APPROPRIATE**

**IF 'YES' TO CARTOON CHARACTER T-SHIRT AT EITHER S4 OR S6 THEN INVITE TO MAIN INTERVIEW.**

**IF 'NO' TO CARTOON CHARACTER T-SHIRT AT BOTH S4 AND S6 THEN THANK AND TERMINATE.**

**INVITATION:**

S8. I have asked you these questions **because** we are interviewing people about some new T-shirt designs. I would like to include you in that survey. It will take about 5 – 10 minutes and we will give you a \$5 cash payment for your cooperation.

Would you like to come to our office and give us your opinions?

YES -> **ASK S9 TO BE SURE SHE HAS ANY NECESSARY EYE GLASSES.**

**THEN ESCORT TO FACILITY.**

NO -> **THANK AND TERMINATE**

S9 Do you wear contacts, eye glasses, or use reading glasses?

**IF YES ASK:** Do you have them with you?

**IF SHE USES ANY TYPE OF GLASSES OR CONTACTS SHE MUST BE WEARING THEM OR HAVE THEM WITH HER.**

**RECORD ON FRONT PAGE FOR NAME, AGE QUOTA, AND SELF OR CHILD QUOTA.**

**S10 and S11 Intentionally left blank**

Suburban Marketing Research  
Paramus, NJ 07652

## **CLOTHING STUDY** **MAIN QUESTIONNAIRE**

**BE SURE T-SHIRT IS COVERED BEFORE BRINGING RESPONDENT INTO THE ROOM.**

**ONLY THE RESPONDENT AND INTERVIEWER MAY BE IN THE ROOM.**

**ESCORT RESPONDENT INTO ROOM AND SEAT HER DIRECTLY IN FRONT OF DISPLAY.**

Respondent Name \_\_\_\_\_

If you usually wear glasses while shopping please put them on now.

Now I am going to show you a T-shirt.

### **UNCOVER T-SHIRT**

Please look at this as you would in a store and were considering buying it. Take as much time as you like looking at it but please don't try it on. Let me know when you are finished and I will ask you a few questions.

Please speak clearly when answering the questions. If you don't know or are unsure about any answer please tell me so and don't guess.

12a. I'd like you to suppose you were thinking of buying a T-shirt and came across this T-shirt.

What company do you think puts out this T-shirt, or don't you know?

\_\_\_\_\_ **ENTER EXACT NAME, THEN ASK 12b**

[ ] Don't know ->**SKIP 12b and GO TO 13**

12b. What in particular about this shirt makes you think it is put out by (\_\_\_INSERT COMPANY FROM 12a\_\_\_)?

---

---

---

**PROBE:** Anything else? \_\_\_\_\_

13. Do you think the company that puts out this T-shirt puts it out themselves, or in association with some other company, or don't you know?

[ ] Themselves-> **SKIP TO 14**  
[ ] In Association-> **ASK 13a and 13b**  
[ ] Don't know -> **SKIP TO 14**

- 13a What other company would that be?

\_\_\_\_\_ **ENTER EXACT NAME THEN ASK 13b**

[ ] Don't know -> **SKIP TO 14**

- 13b. What in particular about this T- shirt makes you think it was put out in association with some other company?

---

---

---

**PROBE:** Anything else? \_\_\_\_\_

14. Do you think the company that puts out this T-shirt got permission from some other company, or did not get permission from some other company, or don't you know?

[ ] Got permission -> **ASK 14a and 14b**  
[ ] Did not get permission-> **SKIP TO 15**  
[ ] Don't know -> **SKIP TO 15**

- 14a What other company would that be?

\_\_\_\_\_ **ENTER EXACT NAME THEN ASK 14b**

[ ] Don't know -> **SKIP TO 15**

- 14b. What in particular about this T- shirt makes you think they got permission from some other company?

---

---

**PROBE:** Anything else? \_\_\_\_\_

**ALL GO TO QUESTION 15 ON NEXT PAGE**

**INTERVIEWER:** Review answers to questions 12a, 13a, and 14a and list each company name given in the column below. If the same name is given more than once, list it only once. Then ask Question 15 below.

If no companies are mentioned then 'X' below and skip to Certification page.

[ ] No companies mentioned in 12a, 13a, or 14a -> **SKIP TO CERTIFICATION**

15. In this interview, you have mentioned one or more company names in response to my questioning. I will read these names to you one at a time.

For each one, please tell me all of the products, that you know of, which this company puts out.

If "None" or you don't know please say so.

**PROBE:** Anything else?

**REPEAT until no more mentions.**

<u>Company names</u>	<u>List All Products mentioned for each company</u>	<u>None</u>	<u>Don't Know</u>
_____	_____	[ ]	[ ]
	_____		
_____	_____	[ ]	[ ]
	_____		
_____	_____	[ ]	[ ]
	_____		

**GO TO CERTIFICATION ON NEXT PAGE**

## **CERTIFICATION PAGE**

Thank you for being part of our survey.

Now I would like to ask you to complete some information, and sign to verify that you were interviewed.

I am asking for your phone number because my supervisor may call to confirm that you were interviewed.

Print Your name \_\_\_\_\_

City or Town and State \_\_\_\_\_

Telephone (\_\_\_\_\_)\_\_\_\_\_

### **RESPONDENT: PLEASE READ AND SIGN**

I acknowledge that I was interviewed on this date. During this interview I was shown a T-shirt and asked some questions about it.

Signature \_\_\_\_\_ Date \_\_\_\_\_

### **INTERVIEWER: PLEASE READ AND SIGN**

I certify that I conducted this interview in accordance with the written and verbal instructions, which I received from my supervisor.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**APPENDIX B**

**DETAILED TABULATIONS**

Disney Unduplicated Mentions  
Summary

SUMMARY	Pushy	Little Miss Bossy	Motor mouth	Miss Chat-terbox	Miss Fabu-lous	Marvel-ous	Little Miss Perfect	Flawless	GRAND TOTALS	Percent of Sample
<b>Little Miss mentions</b>	0	0	0	0	0	0	0	0	0	0.0%
12a	0	0	0	0	0	0	0	0	0	0.0%
13a	0	0	0	0	1	0	0	0	1	0.1%
14a	0	0	0	0	0	0	0	0	0	0.0%
<b>No Little Miss</b>	150	150	150	150	149	150	150	150	1199	99.9%
<b>Disney first mentions</b>										0.0%
12a	100	93	108	104	88	109	97	104	803	66.9%
13a	4	4	13	14	14	6	11	5	71	5.9%
14a	10	9	9	10	11	8	19	14	90	7.5%
<b>Total Disney/Walt Disney/Disney World</b>	114	106	130	128	113	123	127	123	964	80.3%
Looney Tunes	0	3	0	0	0	0	0	0	3	0.3%
Warner Bros	0	4	1	0	0	1	0	0	6	0.5%
Cartoon Network	0	1	0	0	1	0	1	0	3	0.3%
<b>Manufacturers</b>										
Hanes/										
Fruit of the Loom	9	13	10	9	13	11	6	9	80	6.7%
<b>Mass Merch stores</b>										
Wal Mart/Target/										
Kohls/Sears/Penny's	24	23	19	17	7	16	17	13	136	11.3%
No Boundaries	2	0	0	0	0	0	1	1	4	0.3%
Junk Food	0	1	0	1	0	1	1	0	4	0.3%
Delia's	0	3	1	3	1	1	3	0	12	1.0%
Other retail*	9	9	11	7	5	8	15	19	83	6.9%
<b>Total Undup Mentions</b>	158	163	172	165	140	161	171	165	1295	107.9%
<b>Don't Know</b>	26	26	11	14	28	16	13	15	149	12.4%
<b>Total Surveys</b>	150	150	150	150	150	150	150	150	1200	100.0%



**B3**

Disney Unduplicated Mentions  
Little Miss Bossy

cell P Little Miss Bossy																
Market #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
Market name	SD	Atl	Bost	Chi	Clev	Dall	Dnvr	Long I	Houst	Milw	Phila	Phx	LA	Tacom	NJ	LM Bossy %
<b>Disney first mentions</b>																
12a	7	3	6	10	7	5	4	6	8	6	4	7	9	4	7	93 62.0%
13a					1					1	1	1				4 2.7%
14a	1		1							1	4	2				9 6.0%
Total	8	3	7	10	8	5	4	6	8	8	9	10	9	4	7	106 70.7%
<b>Other mentions</b>																
<b>Disney/Walt</b>																
<b>Disney/</b>																
Disney World	8	3	7	10	8	5	4	6	8	8	9	10	9	4	7	106 70.7%
Looney Tunes							1			1					1	3 2.0%
Warner Bros			1	1				2								4 2.7%
Cartoon Network		1														1 0.7%
<b>Manufacturers</b>																
Hanes/																
Fruit of the Loom	1	2			1		1	1	3			2	2			13 8.7%
<b>Mass Merch stores</b>																
Wal Mart/Target/																
Kohls/Sears/Penny's	1	1			5	1	3		1	2	3	4		1	1	23 15.3%
No Boundaries																0 0.0%
Junk Food								1								1 0.7%
Dellia's											2				1	3 2.0%
Other retail *					2		1		2		1	2				9 6.0%
Total Undup Mentions	10	7	8	11	16	6	10	10	14	11	15	18	11	6	10	163 108.7%
Don't Know	1	4	2		1	5	3	2	1				1	6		26 17.3%
Total Surveys	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	150 100.0%
<b>* Specifics for Other</b>																
					Osh Kosh, Child-ren's Place				Ed Hardy, Dillards			Levi's, Hot Topic		Limited Too		

**B5**

Disney Unduplicated Mentions  
Miss Chatterbox

Cell T Miss Chatterbox																
Market #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
Market name	SD	Atl	Bost	Chi	Clev	Dall	Dnvr	Long I	Houst	Milw	Phila	Phx	LA	Tacom	NJ	Miss Chat-terbox %
<b>Disney first mentions</b>																
12a	8	6	6	8	8	4	7	4	9	8	5	8	10	7	6	104 69.3%
13a	2	1	1			1		2	1		2		2	2	2	14 9.3%
14a				1		1	1	2		1	3	1				10 6.7%
Total	10	7	7	9	8	6	8	8	10	9	10	9	10	9	8	128 85.3%
<b>Other mentions</b>																
<b>Disney/Walt</b>																
<b>Disney/</b>																
Disney World	10	7	7	9	8	6	8	8	10	9	10	9	10	9	8	128 85.3%
Looney Tunes																0 0.0%
Warner Bros																0 0.0%
Cartoon Network																0 0.0%
<b>Manufacturers</b>																
Hanes/																
Fruit of the Loom		1	1	2				1				2		1	1	9 6.0%
<b>Mass Merch stores</b>																
Wal Mart/Target/																
Kohls/Sears/Penny's	1				4	2	3			1		4		2		17 11.3%
No Boundaries																0 0.0%
Junk Food								1								1 0.7%
Dellia's											2				1	3 2.0%
Other retail*	1			1	1	1	1		1	2	1					7 4.7%
Total Undup Mentions	10	10	8	11	13	8	12	10	11	12	13	15	10	12	10	165 110.0%
Don't Know		1	2	1		2	1	2		1		1		1	2	14 9.3%
Total Surveys	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	150 100.0%
<b>* Specifics for Other</b>																
		Child- ren's Place			Riders	Green Tees		Kids Head qrtrs	phone comp, Shopko	cell phone comp.						

Disney Unduplicated Mentions  
Miss Fabulous

cell Y Miss Fabulous																
Market #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
Market name	SD	Atl	Bost	Chi	Clev	Dall	Dnvr	Long I	Houst	Milw	Phila	Phx	LA	Tacom	NJ	Miss Fabulous \$
<b>Disney first mentions</b>																
12a	5	7	7	5	3	5	7	3	5	6	7	7	7	6	8	88 58.7%
13a	2	1			2	1	1	3		2	1	1	1			14 9.3%
14a	1	1		2	1	1			2	1	2					11 7.3%
Total	8	9	7	7	6	7	7	6	7	9	10	8	8	6	8	113 75.3%
<b>Other mentions</b>																
<b>Disney/Walt Disney/</b>																
Disney World	8	9	7	7	6	7	7	6	7	9	10	8	8	6	8	113 75.3%
Looney Tunes																0 0.0%
Warner Bros																0 0.0%
Cartoon Network					1										1	0.7%
<b>Manufacturers Hanes/</b>																
Fruit of the Loom		2		1			1	1	2	1	1	2		1	1	13 8.7%
<b>Mass Merch stores</b>																
Wal Mart/Target/																
Kohls/Sears/Penny's	1			1	1	1	1		1					1		7 4.7%
No Boundaries																0 0.0%
Junk Food																0 0.0%
Dellia's															1	0.7%
Other retail*					1		1			1	1		1			5 3.3%
Total Undup Mentions	9	11	7	9	9	8	10	7	10	11	12	10	9	8	10	140 93.3%
Don't Know	2		3	2	3	3	2	4	1	1		1	2	3	1	28 18.7%
Total Surveys	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	150 100.0%
<b>* Specifics for Other</b>																
							Spencer's			girl's clothing store	Journeys		Limited Too			

B8

Disney Unduplicated Mentions  
Little Miss Perfect

cell O Little Miss Perfect																
Market #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
Market name	SD	Atl	Bost	Chi	Clev	Dall	Dnvr	Long I	Houst	Milw	Phila	Phx	LA	Tacom	NJ	LM Perfect %
Disney first mentions																
12a	8	7	5	6	6	5	6	7	5	8	8	9	5	6	6	97 64.7%
13a		1	1	2	2	1			1	2			1			11 7.3%
14a	1		2	2	2	3	1	1	1			1	1	3	3	19 12.7%
Total	9	8	6	10	10	9	7	8	7	10	8	10	7	9	9	127 84.7%
Other mentions																
Disney/Walt Disney/																
Disney World	9	8	6	10	10	9	7	8	7	10	8	10	7	9	9	127 84.7%
Looney Tunes																0 0.0%
Warner Bros																0 0.0%
Cartoon Network							1									1 0.7%
Manufacturers Hanes/																
Fruit of the Loom	2	1			1	1	1									6 4.0%
Mass Merch stores																
Wal Mart/Target/																
Kohls/Sears/Penny's			3	1	1	1	1		1	2	2	3	1	2		17 11.3%
No Boundaries																1 0.7%
Junk Food	1															1 0.7%
Della's								1			1		1			3 2.0%
Other retail*			1		1		1	1	3	1	2	1	2		2	15 10.0%
Total Undup Mentions	10	10	8	13	13	11	12	10	11	13	13	14	11	11	11	171 114.0%
Don't Know	1	1	3			1	1	1	2		2			1		13 8.7%
Total Surveys	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	150 100.0%
Specifics for Other									Steve& Barry's, Family \$, Bargains for You	Youn-ker's	Pac Sun, Specialty retailer	Aero postale	T-shirts Galore, Limited		Gap, Old Navy	
			Urban Out-fitters		Hot Topic		Dil-lard's al's	Marsh-lard's al's								

**B10**



**APPENDIX C**

CURRICULUM VITAE

PRIOR TESTIMONY

COMPENSATION

MYRON J. HELFGOTT, PH.D.  
37 WEST 12<sup>TH</sup> STREET  
NEW YORK, NY 10011  
212-929-7215

-----  
From 1952 to the present, I have been employed as a professional in Survey Research, Marketing and Advertising. I have performed these surveys for over 300 of the top 500 U.S. Industrial Corporations, as per *Fortune Magazine's* List.

#### **EXPERIENCE**

- 1982 - Present Consultant to attorneys and supplier of survey research and expert witness testimony for litigation involving trademark names and symbols, package and product design, and advertising claims. Clients include: *Ideal Toy Company, Arrow Staple Guns, Sony, Columbia, Broadcasting System, Cooper Industries, Mars Candy Corp., Warner-Lambert, J. Crew Catalogues, Audi and Volkswagen Automobiles, Listerine Products, Atari, Inc., Selchow & Righter, Bristol-Myers Squibb, and SmithKline Beecham.*
- 1962 - 1982 Founder and Chief Executive of *Helfgott, Towne & Silverstein, Inc.*, a New York City Advertising Agency. Billing \$25,000,000 annually. Principle clients: *Ideal Toy Company, Airwick Industries, Canandaigua Wine Company.*
- 1957 - 1962 Vice President, *Lippincott & Margulies, Inc.*, a New York City Industrial Design Firm, and President of three affiliated research and marketing corporations: *Package Research Institute, Image Research, Inc.*, and *Names, Inc.*
- 1955 - 1957 Director of Research Department, *Ogilvy & Mather, Inc.*, a large advertising agency.
- 1954 - 1955 Senior Research Study Director, Research Department, Young & Rubicam, Inc., another large advertising agency.
- 1952 - 1954 Lecturer in Social Psychology, *Columbia University* and Research Study Director, *Columbia University Bureau of Applied Social Research.*
- 1952 Assistant Research Study Director, *University of Michigan Survey Research Center.*

#### **EDUCATION**

- 1952 *University of Michigan* - Director of Philosophy Degree in Social Psychology.
- 1949 *New York University* - Master of Arts Degree in Social Psychology.
- 1948 *Brooklyn College* - Bachelor of Arts Degree in Psychology.

### **PRIOR TESTIMONY**

I have provided sworn expert testimony in deposition or at trial in the following cases in the past five or more years:

a. Calvin Klein, Inc. v. Calvin Clothing Company, Consolidation Opp. Nos. 117112, 117113, 112484, 123007. TTAB.

b. Twentieth Century Fox Films Corporation v. Marvel Enterprises, Tribune Entertainment and Fireworks Television, (Civil Action No. 01CV3016[AGS]).

c. Minnesota Specialty Crops, Inc. v. Minnesota Wild Hockey Club, L.P. and NHL Enterprises, L.P., Court File No.: 00-CV-2317 JRT/RLE.

d. Bristol-Myers Squibb Company v. Rhone-Poulenc Rorer, Inc. (Taxol), Civil Action No. 95-8833 (RPP).

e. SmithKline Beecham (Relafen) v. Others, Nabumetone Patent Litigation, Civil Action No. 97-12416-RCL (U.S.D.C Mass 1999)

f. Nabisco, et. al. v. Warner-Lambert Co., 97 Civ. 4272 (CBM) (S.D.N.Y. 1997).

g. Hershey Foods Corp. and Homestead, Inc. et. al., v. Mars Incorporated, 1:CV-97-1719 (WWC) (M.D. Pa. 1997).

h. J & G Grant v. Wine Is Fine, Inc. d/b/a Preiss Imports, et. al., Civ. Act. 95-8165 WDI (BQRX).

i. Kal Kan Foods, Inc. v. Doca USA, C.V. 97-0139 LGB (CWx) (C.D. Calif., Western Div.).

j. Golden Bear International v. Bear U.S.A., Inc., 42 U.S.P.Q. 2d 1283, (N.D. Ga., Atlanta Div., 1996) (Civ. Act. No. 1:96-CV-0579-JTC).

k. Stanley Tools v. Arrow Staple Guns, 96 CIV 1998 (LAP) (S.D.N.Y. 1996)

l. Polaris Pool Systems, Inc. v. Letro Products, Inc., Civ. Act. 94-7747 (JMI) (C.D. Calif.).

m. SmithKline Beecham v. Mylan Pharmaceuticals, Inc., 94-CV-2847 (JP) (E.D. Pa.).

n. Danish Dairy Board v. Ministry of Commerce of the Republic of Cyprus, Cancellation No. 19,815 (TTAB) (Reg. No. 1,591,489).

o. Mars Candy Co. v. Cool Chocolates Candy Co., 92-Civ.-4353 (D.N.J., Trenton).

**COMPENSATION**

My compensation for work on this assignment is charged at that rate of \$500.00 per hour.

**APPENDIX D**

List of Documents Considered

**List of Documents Considered**

2009-02-11 - Second Amended Complaint and Jury Demand  
2009-02-27 - Answer to Amended Complaint, Counterclaim filed by TWDC  
2009-03-04 - Answer to Amended Complaint, Counterclaim filed by DCP  
2009-03-04 - Answer to Amended Complaint, Counterclaim filed by DD  
2009-03-20 - Answer to DCP's Counterclaim  
2009-03-20 - Answer to DD's Counterclaim  
2009-03-20 - Answer to TWDC's Counterclaim  
2009-06-15 - Expert Report of Gary Ford  
2009-06-17 - Protective Order  
2009-06-19 - Amended Expert Report of Gary Ford